IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

EAST ROCKHILL TOWNSHIP,

:

Plaintiff/Counterclaim Defendant,

Civil Action No. 2:18-cv-02382-GAM

v.

(Diversity Jurisdiction)

RICHARD E. PIERSON MATERIALS CORP. d/b/a R.E. PIERSON MATERIALS, INC. and HANSON AGGREGATES PENNSYLVANIA, LLC,

Originally Filed in the Court of Common Pleas, Bucks County

Case No. 18-02730

Defendants/Counterclaim

Plaintiffs,

:

RICHARD E. PIERSON CONSTRUCTION

v.

CO., INC.,

Additional Counterclaim Plaintiff,

:

EAST ROCKHILL TOWNSHIP BOARD OF SUPERVISORS, GARY VOLOVNIK, DAVID NYMAN, JIM NIETUPSKI, and MARIANNE MORANO,

:

Additional Counterclaim Defendants.

ORDER

This 6th of March, 2019, upon consideration of Plaintiff/Counterclaim Defendant East Rockhill Township's request for injunctive relief (Complaint Counts I and II) (ECF No. 1) and Defendant/Counterclaim Plaintiffs, Richard E. Pierson Materials Corp. and Hanson Aggregates Pennsylvania LLC's, and Additional Counterclaim Plaintiff Richard E. Pierson Construction Co. Inc.'s claim under the Declaratory Judgement Act, 28 U.S.C. § 2201, (Counterclaim Count I) (ECF No. 23), it is hereby **ORDERED** as follows:

- Plaintiff/Counterclaim Defendant's request for Equitable/Injunctive relief as to the Land Development Activity/Improvement in Count II of the Complaint is hereby **DENIED**.
- 2. Counterclaim Plaintiffs are entitled to Declaratory Judgment holding that the Noncoal Surface Mining Conservation and Reclamation Act ("the Mining Act"), 52 Pa. Stat. Ann. §§ 3301-3326 (West), preempts the Township's actions with respect to the issuance of a permit for the quarry. Counterclaim Defendants are therefore hereby ENJOINED from:
 - a. Requiring Counterclaim Plaintiffs to comply with the H-12 Extractive Operation
 Use Provisions;
 - b. Requiring Counterclaim Plaintiffs to obtain a special exception in order to increase extraction activities;
 - Requiring Counterclaim Plaintiffs to obtain land development approval before
 installing new equipment or buildings specifically related to their mining
 operation.
- 3. With respect to Plaintiff/Counterclaim Defendant's request for Equitable/Injunctive Relief as to the Asphalt Plant in Count I of the Complaint and Counterclaim Plaintiffs' request for Declaratory Judgment that operation of asphalt plan equipment constitutes an accessory use to the Quarry, I decline to exercise jurisdiction under the Declaratory Judgment Act, 28 U.S.C. § 2201. Count I of the Complaint and Counterclaim Count I with respect to paragraph 92(d) of the Amended Answer, Affirmative Defenses, and Counter Claims (ECF No. 23), are hereby **SEVERED** and **REMANDED** to the Bucks County Court of Common Pleas.

/s/ Gerald Austin McHugh United States District Judge